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Procter & Gamble

The Procter & Gamble Company
General Offices
1 Procter & Gamble Plaza, Cincinnati, Ohio 45202-3315

November 15, 2000

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street NW
Washington, DC 20423-0001

ENTERED
Office of the Secretary

NOV 16 2000

Part of
Public Record

Re: STB Ex Parte No. 582 (Sub-No. 1), "Major Rail Consolidation Procedure"

Dear Secretary Williams,

Enclosed for filing in the above-referenced matter are an original and 25 copies of the Comments of The Procter & Gamble Company, together with a WordPerfect diskette. A certificate of service accompanies the document.

If there are any questions concerning this matter, please call the undersigned at (513) 983-6748.

Sincerely yours,



Michael R. Benoit

Michael R. Benoit
N.A. Rail Process Owner
The Procter & Gamble Company

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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of the Secretary

NOV 16 2000

**Part of
Public Record**

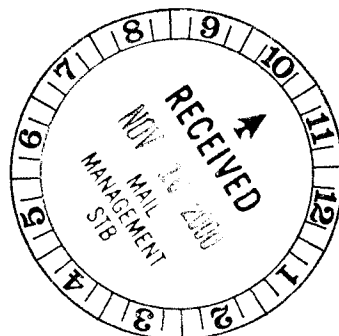
STB Ex Parte 582 (Sub-No. 1)

Major Rail Consolidation Procedures

COMMENTS

submitted by

The Procter & Gamble Company



Michael R. Benoit
N.A. Rail Transportation Manager
The Procter & Gamble Company
1 Procter & Gamble Plaza
Cincinnati, Ohio 45202

Due: November 17, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte 582 (Sub-No. 1)

Major Rail Consolidation Procedures

COMMENTS

submitted by

The Procter & Gamble Company

The Procter & Gamble Company ("P&G") respectfully submits these comments to the Surface Transportation Board ("STB") in response to the Notice of Proposed Rulemaking issued by the STB on October 3, 2000.

P&G appreciates the opportunity to comment on these proposed modifications to the current rules for major rail consolidations. The comments below are outlined to match up with Section 1180 of the Railroad Consolidation Procedures. In general, P&G believes that some of the changes have not progressed far enough relative to the needed results and that a number of topics have remained close to the status quo. In addition, the proposed rules lack defined criteria to approve/disapprove a merger.

Section 1180.1 Comments

(a) General: This section states that "... the Board does not favor consolidations that reduce the railroad and other transportation alternatives available to shippers unless there are substantial and demonstrable public benefits to the transaction that cannot otherwise be achieved ...". This concept of reducing alternatives to shippers is not an acceptable one under any conditions, and it certainly conflicts with the concept of enhanced competition. There is a theme throughout the proposed rules that it is somehow possible to have enhanced competition and public benefits offset any anti-competitive effects of a merger. Mergers that contain a trade-off such as this should be disapproved based on failing to meet

the criteria of truly enhancing competition. Competitive harm to one industry or shipper cannot be offset by a competitive advantage to a different industry or shipper. Also, the "substantial and demonstrable public benefits" suggested by merging railroads need to be agreed upon by shippers as opposed to merely being an opinion of the merging railroads. Lacking any specific criteria in the proposed rules, public benefits such as improved service and enhanced competition need to be judged by shippers as opposed to the STB or merging railroads. P&G recommends that, relative to "public benefits", a process to involve shippers in the decision to approve or disapprove a merger be developed and defined as part of the merger rules.

(c) Public interest considerations: The first sentence of this paragraph begins with the "trade-off" theme by stating "The Board believes that mergers serve the public interest only when substantial and demonstrable gains in important public benefits - such as improved service, enhanced competition, and greater economic efficiency - outweigh any anti-competitive effects, potential service disruptions, or other merger-related harms." This approach will not meet our needs as a shipper. In addition, the rules go on to state that "merger applications must include provisions for enhanced competition". P&G recommends that the rules state the minimum criteria that need to be achieved relative to the enhancement of competition in order for the merger to be approved. When a merger application fails to meet this criteria, the STB should disapprove the merger rather than approve the merger subject to conditions specified by the STB relative to the preservation and enhancement of competition. The STB should not take on the role of completing the application for the merging railroads, and whether or not "both carriers are financially sound" should have no bearing on how these merger rules are applied. The merger should also be disapproved if the public benefits claimed by the merging railroads fail to be agreed upon by shippers or if the benefits can be achieved by means other than a merger. In addition, the rules need to outline the consequences that applicants will bear for a merger that fails to meet the promised public benefits, to include shipper rate protection. The merger rules should be framed in such a manner as to place the burden of failure on the applicants as opposed to on both the applicants and shippers. The rules should no longer be silent on the consequences for applicants who fail to meet their commitments.

(c)(1) Potential benefits: The proposed rules state that "To the extent that a merged carrier continues to operate in a competitive environment, its new efficiencies will be shared with shippers and consumers." Based on past mergers, this statement is an assumption as opposed to a fact. If railroad merger benefits are to be shared with shippers, the rules will need to specifically state how that is to happen. Also, for the railroad calculation of the net public benefits, the rules need to identify the specific measurements and data needed, both prior to and after the merger, to support these claims. Again, lacking any specific criteria to measure the validity of these benefits, these benefits need to be judged by shippers as opposed to the STB or merging railroads. The rules should also specify the consequence of failing to meet or share these benefits, as opposed to having the merging railroads propose additional measures for the STB to take if the benefits do not materialize.

(c)(2)(i) Reduction of competition: The proposed rules state that "Applicants shall propose remedies to mitigate and offset competitive harms." Again, this is the "trade-off" theme, and it will not meet our needs as a shipper in that it contradicts the need to enhance competition. The rules should simply state that merger applications that result in competitive harms will be disapproved by the STB. The proposed rules further state that "Applicants shall also explain how they would at a minimum preserve competitive options such as those involving the use of major gateways ...". It is generally recognized that closing any of the few remaining major gateways (either physically or via the imposition of higher rates) is a step to reduce competition. As a result, rather than have the railroads explain how they will preserve the gateways, the rules should mandate gateway requirements, to include pre-merger versus post-merger pricing. Likewise, the merger rules should mandate the requirements for opening terminal areas to reciprocal switching, "inter-switching" provisions, and contracts for the competitive portion of joint-line routes when the joint-line partner has a bottleneck segment.

(c)(2)(iii) Transitional service problems: The proposed rules state that "...the Board, in its determination of the public interest, will weigh the likelihood of transitional service problems". It is not clear how the STB will evaluate the "likelihood" of these types of problems, and more importantly, what criteria will be used to decide if the potential for these types of problems is large enough to lead to the

disapproval of the merger. At a minimum, the "approval/disapproval" criteria should be stated in the new rules.

(c)(2)(iv) Enhanced competition: The proposed rules state that "To offset harms that would not otherwise be mitigated, applicants shall explain how the transaction and conditions they propose will enhance competition." This implies that the applicants do not need to enhance competition unless it is necessary as a last resort to offset other harms. An important improvement such as this should be stated as a clear requirement as opposed to something that is optional and used only if the applicants have no other choices relative to mitigating merger harms.

(d) Conditions: In general, imposing conditions on consolidations is appropriate. As examples, conditions that grant trackage rights, require access for other carriers to facilities, or establish inter-switching provisions are useful from the standpoint of providing direct remedies to specific merger harms. However, the concept of using conditions to off-set merger harms in an indirect manner will not meet our needs as a shipper. Rather than impose conditions to off-set these types of merger harms, the merger should be disapproved. In addition, the proposed rule change implies that conditions would not be imposed where they would result in "unreasonable operating, financial, or other problems for the combined carrier". In such a case, the merger should be disapproved rather than intentionally harm shippers by protecting the combined carrier from the imposition of appropriate conditions.

(g) Oversight: The addition of this rule is beneficial. An improvement would be to require that any "merger benefit projections accepted by the Board" be realized within the time period specified by the merging railroads in their application as opposed to "in a timely fashion".

(h) Service assurance and operational monitoring: The addition of this rule is beneficial, especially the requirement for applicants to establish problem resolution teams and specific procedures for problem resolution. The rule should clarify that these teams and procedures are to be established and approved by the STB prior to the merger starting and that failure to meet this requirement will cause the merger to be placed on hold or disapproved. The rules should also specify the typical types of merger-related damages that are valid for a shipper to recover through the claims process.

(i) Cumulative impacts and crossover effects: The proposed changes relative to evaluating the impact of additional mergers are beneficial. However, rather than have the applicants anticipate the reaction of the other Class I railroads, the rules should establish a period of time for the other Class I railroads to respond for themselves on this matter. Also, P&G still recommends that if the strategic responses of the other Class I railroads include more mergers, then the rules should require the merger proceedings to stop until such time that all of the proposed mergers can be reviewed against the merger rules as a package.

Section 1180.6 Comments

Rules on supporting information will need to be changed to reflect the documentation needed for the recommendations stated above. Additional changes are outlined below.

(b)(11) Calculating public benefits: The addition of this rule is beneficial. However, applicants should be required to quantify all net public benefits versus only those they view as possible to quantify. Benefits described only in general terms such as "more efficient", "improved", "faster", etc. should be viewed as opinions of the applicants as opposed to commitments on the part of the applicants to produce the promised benefits. The rules should require applicants to describe all public benefits for which they are making a commitment in measurable terms with the pre-merger base data already outlined in the application. The applicants should be required to submit a detailed plan for each promised benefit outlining how the gap between the current (pre-merger) results and the promised results will be closed. The rules should require the applicants to provide an analysis describing why these benefits cannot be achieved without a merger. Also, the rules should require the applicants to establish the timeline by which they plan to deliver these benefits so that the STB will be able to better evaluate if the promises are reasonable and to easily determine if the promises are being achieved in the planned timing.

Section 1180.7 Comments

One addition to the required list of market analyses is recommended. With the reduced number of Class I railroads remaining, an analysis of the dynamics relative to competition for interline moves that interchange at major gateways should be required. The projected impact to shipper carrier choices at the

gateway by virtue of the proposed merger should be outlined for representative origin-destination pairs. Proposed solutions to identified problems should also be required.

Section 1180.8 Comments

(a) **“Full system” operating plan:** The addition of this rule is beneficial. However, this rule should also require the applicants to outline their plans relative to increasing the number of engines in the combined fleet as well as plans for staffing increases for additional crews to support the new system. The applicants should also provide projections on the expected timing for these assets to decrease based on the achievement of expected system efficiencies.

Section 1180.10 Comments

(a) **Integration of operations:** For the route level review, applicants should be required to provide average transit time data for one year prior to the merger for these routes and describe any expected improvements against this base.

(c) **Yard and terminal operations:** Applicants should be required to provide plans for yard consolidations as well as plans for capital improvements to existing yards. Also, in addition to dwell time, applicants should be required to provide average yard inventories for one year prior to the transaction for each facility.

(f) **Customer service:** Applicants should be required to identify any planned post-merger staffing reductions and consolidation of operations.

Conclusion

P&G recommends that the proposed rules be strengthened by making the changes listed above, especially in the areas of enhancing competition and implementing consequences for mergers that fail to meet the established criteria and/or promised benefits. Without these types of changes, we believe that these rules will lead to mergers being approved with conditions as opposed to having clear evaluative criteria. These changes will give both the STB and the applicants the clarity needed to move forward with a merger or to disapprove it if the proposed merger fails to meet the criteria. The STB must move from a position of approving, and afterwards salvaging, mergers that did not meet the expected results to approving only those mergers, if any, that will meet the expected results. The proposed merger rules

should in no way be viewed as a tool to enhance rail-to-rail competition. The STB can use other means to enhance competition versus doing so through the merger process. However, it is critical that existing rail-to-rail competition be preserved due to the extraordinary measures necessary to allow any new entry into the current market.

Respectfully submitted,

By: 

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Cincinnati, Ohio 45202

N.A. Rail Process Manager

Dated: November 15, 2000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of November, 2000, he served a true and correct copy of the above and foregoing document on all parties of record on the Service List (Appendix A of the Notice To Parties in this proceeding served April 28, 2000) in accordance with the Surface Transportation Board's Rules of Practice by:

☒ United States mail, first class postage prepaid

☐ Facsimile transmission

☐ Hand delivery



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